APPEAL NO. 022168
FILED OCTOBER 8, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 2, 2002. His determinations on injury and disability were remanded in Texas Workers' Compensation Commission Appeal No. 021278, decided July 8, 2002, due to new evidence that could have caused a different result. A new session of the CCH was held on July 29, 2002. After this hearing, the hearing officer determined that the appellant (claimant) did not sustain a repetitive trauma injury on _____, and therefore her inability to work did not constitute "disability" as defined in the 1989 Act.

In a second appeal, the claimant assails the accuracy of the videotape evidence that was presented at the earlier session of the CCH, stating that it does not accurately portray her injurious tasks. The respondent (carrier) responds that this argument was waived because it was not raised at the first appeal, but even if considered, the record shows that the claimant agreed the videotape showed essentially what she did during the day, even if the particular model of machinery was different.

DECISION

We affirm the hearing officer's decision.

The hearing officer reopened the record to admit the additional evidence and all matters related to the first session of the CCH. He noted that his decisions on date of injury and notice to the employer, not having been appealed, stood as originally determined.

The hearing officer did not err in holding that the claimant did not sustain an occupational disease by way of repetitive trauma. Section 401.011(36) defines repetitive trauma injury as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." To recover for an occupational disease of this type, one must not only prove that repetitious, physically traumatic activities occurred on the job, but also must prove that a causal link existed between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment, or present to a greater degree, as compared with employment generally. Davis v. Employer's Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). Whether such activities took place in connection with employment and caused injury is a fact determination to be made by the hearing officer. The claimant had a chance to explain what was similar and what was different about the videotaped activities in evidence. We cannot agree that the hearing officer's decision reflects total reliance on a misunderstanding of what the claimant's job entailed.

We will not apply waiver to the claimant's ability to raise new evidentiary points concerning the basic issue of compensable injury. Although the claimant now argues that the Appeals Panel was "fooled" by the hearing officer into believing that omitted medical evidence causing the remand was important to the case, plainly this new evidence was a central feature of the claimant's previous appeal even though he now questions the importance of that evidence. The Appeals Panel has reviewed all of the record in light of the appeal and cannot agree that the decision is so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

The true corporate name of the insurance carrier is **SECURITY INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Michael B. McShane
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge